

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NIGEL FREDRICKS,

Plaintiff,

-v-

DR. LIONEL DESROCHAS; CAPTAIN LEMON;
CORRECTION OFFICER WHITE, JR., Shield No. 8507;
and CORRECTION OFFICER RITTER, in their individual
capacities,

Defendants.

CIVIL ACTION NO. 21 Civ. 8389 (JGLC) (SLC)

ORDER OF SERVICE

SARAH L. CAVE, United States Magistrate Judge.

On January 18, 2024, Plaintiff Nigel Fredricks (“Mr. Fredricks”), who is appearing pro se, filed the Second Amended Complaint (“SAC”), naming as Defendants “Dr. Lionel Desrochas” (“Dr. Desrochas”); “Captain Lemon”; “Correction Officer White, Jr.”; and “Correction Officer Ritter,” in their individual capacities (collectively, the “Individual Defendants”). (ECF Nos. 34 at 1; 36 at 1).¹ On February 2, 2024, the Court ordered counsel of record for the City of New York (the “City”) to confirm who, if any, of the Individual Defendants the City represents, and if those Defendants will waive serve of the SAC. (ECF No. 39; see ECF Nos. 41–42). The City has since filed a waiver of service for all Individual Defendants except Dr. Desrochas (ECF No. 43), and states that it cannot waive serve for Dr. Desrochas because the Physician Affiliate Group of New York (“PAGNY”) “cannot waive service of process on behalf of its employees.” (ECF No. 44 at 2).

¹ The Court has “deem[ed] the documents filed at ECF No. 34 and ECF No. 36 a single instrument that will [] be treated as the SAC.” (ECF No. 41 at 3).

Because Mr. Fredricks has been granted permission to proceed in forma pauperis ("IFP") (ECF No. 2), he is entitled to rely on the Court and the U.S. Marshals Service (the "U.S. Marshals") to effect service of the SAC.² Walker v. Schult, 717 F.3d 119, 123 n.6 (2d Cir. 2013); see also 28 U.S.C. § 1915(d) ("[t]he officers of the court shall issue and serve all process . . . in [IFP] cases"); Fed. R. Civ. P. 4(c)(3) (instructing that the court "must" order the U.S. Marshals to serve "if the plaintiff is authorized to proceed [IFP]"). The Court respectfully directs the Clerk of Court to complete and process a U.S. Marshals Service Process Receipt and Return form ("USM-285 Form") for Dr. Desrochas. The Clerk of Court is further directed to issue a summons for Dr. Desrochas, and to deliver to the U.S. Marshals all the paperwork necessary for the U.S. Marshals to effect service of the SAC on Mr. Desrochas.

If the SAC is not served within 90 days after the date the summons is issued, Mr. Fredricks should request an extension of time for service. See Meilleur v. Strong, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is plaintiff's responsibility to request an extension of time for service). Mr. Fredricks must notify the Court in writing if his address changes, and the Court may dismiss the action if Mr. Fredricks fails to do so. Mr. Fredricks is advised of his ability to seek free legal advice from the New York Legal Assistance Group's legal clinic by visiting its website at nylag.org/pro-se-clinic, or by calling 212-659-6190. This clinic is not part of or run by the Court and it cannot accept filings on behalf of the Court.

In sum, the Clerk of Court is respectfully instructed to complete the USM-285 Form with the address for Dr. Desrochas below and to deliver to the U.S. Marshals all documents necessary

² Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, here, the Court extends the time to serve until 90 days after the date the summons is issued.

to effect service of the SAC. The Court again notes that the SAC is found at ECF No. 34 and ECF No. 36, and both documents must be served on Dr. Desrochas.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444–45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

The Clerk of Court is further directed to mail a copy of this Order to Mr. Fredricks.

Dated: New York, New York
February 29, 2024

SO ORDERED.



SARAH L. CAVE
United States Magistrate Judge

SERVICE ADDRESS

Dr. Lionel Desrochas
PAGNY-Correctional Health Services
49-04 19th Avenue, 1st Floor
Astoria, NY 11105
c/o Gwendolyn Renee Tarver